

Doc. # 5195
ADOPTED 6/29/89

RESOLUTION OF THE BOSTON REDEVELOPER AUTHORITY RE:
TRANSFER OF GROUND LEASES WITH RESPECT TO BUILDINGS 149 AND 199
IN THE CHARLESTOWN NAVY YARD, CHARLESTOWN URBAN RENEWAL AREA
PROJECT NO. MASS. R-55.

WHEREAS, the Boston Redevelopment Authority (hereinafter the "Authority") entered into a Ground Lease, dated May 23, 1985, (the "Building 149 Ground Lease"), with Constitution Office Park Associates Limited Partnership, a Massachusetts limited partnership ("COPALP"); and

WHEREAS, the Authority also entered into a Ground Lease, dated May 23, 1985 (the "Building 199 Ground Lease") with Navy Yard Parking Associates/LNRC Venture, a joint venture of Navy Yard Parking, Inc., an Indiana corporation, and Navy Yard Parking Associates Limited Partnership, a Massachusetts limited partnership (the "Venture"); and

WHEREAS, the lessee's estate in and to the Building 149 Ground Lease and all of the ownership interests with respect to the Venture, with the consent of the Authority, heretofore were transferred to Navy Yard - Biotechnical Research Associates Limited Partnership, a Massachusetts limited partnership ("Biotech LP"); and

WHEREAS, Biotech-LP and the Venture have determined to sell and assign their respective interests in and to the Building 149 Ground Lease and the Building 199 Ground Lease (collectively, the "Ground Leases") to the Massachusetts Industrial Finance Agency ("MIFA") or its designee (collectively the "Transferee"), substantially upon the terms and conditions outlined in a letter (the "Haddad letter") to the Authority dated June 23, 1989 from Ernest M. Haddad, Secretary and General Counsel of the Massachusetts General Hospital ("MGH") and in that certain draft Contract of Sale by and among Biotech LP, the Venture and MIFA (the "Purchase Agreement"), a copy of which has heretofore been delivered to the Authority; and

WHEREAS, it is contemplated that the Transferee and/or MGH and their respective affiliates will have to arrange substantial additional mortgage financing in connection with the foregoing transactions and use and occupancy of Building 149 and 199 by the General Hospital Corporation (the "General") and other affiliates of MGH; and

WHEREAS, it is further contemplated that the foregoing transactions may require one or more subsequent transfers of the lessee's estates under the Ground Leases to tax exempt entities affiliated with MIFA or MGH; and

WHEREAS, certain of the foregoing transactions require the consent of the Authority and certain transfer payments to the Authority under the Ground Leases;

NOW THEREFORE BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That the sale and assignment by Biotech - LP and the Venture of their respective interests in and to the Ground Leases to the Transferee substantially upon the terms and conditions set forth in the draft Purchase Agreement, be and hereby is approved; and
2. That, in consideration of the foregoing consent, there shall be paid to the Authority, simultaneously with the transfer and assignment by Biotech LP and the Venture of their respective interests under the Ground Leases in the amount of \$2,800,000, such payment to be paid one-half by Biotech - LP and one-half by the Transferee, it being understood that no further consent of the Authority shall be required, and no further transfer fee shall be due under the Ground Leases in the event of any subsequent transfer or transfers to one or more tax exempt entities affiliated with either MIFA or MGH; and
3. That, pursuant to the provisions of the Ground Leases, the Authority hereby consents to additional mortgage financing with respect to acquisition of, and improvements to, the lessee's estate under the Ground Leases in an amount not to exceed, in the aggregate, \$270,000,000, such financing to be provided through the proceeds of bonds issued by MIFA or through financing by one or more other institutional lenders or their subsidiaries or affiliates; and
4. That, pursuant to the Ground Leases, the Authority hereby consents to amendments to the existing subleases, or new subleases, with the General or other affiliates of MGH substantially upon the terms and conditions set forth in the draft Purchase Agreement, the Haddad Letter and their respective schedules and attachments; and
5. That the Authority hereby approves a payment in lieu of taxes arrangement under the Ground Leases substantially upon the terms outlined in the Haddad Letter and agrees to take such actions as may reasonably be required to assist the Transferee in entering into a payment in lieu of tax agreement with the City of Boston; and
6. That the Authority hereby approves the Transferee's assumption of the transferor's obligations under the Development Impact Project Agreement substantially upon the terms outlined in the Haddad Letter; and
7. That the Authority hereby approves the proposed rental terms with respect to the Ground Leases outlined in the Haddad Letter; and
8. That, pursuant to the provisions of the Ground Leases, and without limitation on the generality of any of the foregoing resolutions, the Authority hereby authorizes and consents to such

amendments to the Ground Leases as shall, in the discretion of the Director, be necessary or desirable to effectuate the above contemplated transactions, including, without limitation, that the obligations of MIFA or its designated affiliate under the Ground Leases be limited in recourse as to payment or performance solely to that payment and performance to be rendered by the General and its affiliates under the above-referenced leases, and that, upon the qualification of Massachusetts Biomedical Research Corporation ("MBRC"), as exempt under Section 501(c)(3) of the Internal Revenue Codes, MIFA or its designated affiliate may freely assign the Ground Leases to MBRC and be released for all liability thereunder.

9. That, in connection with all of the foregoing, the Director be and hereby is authorized for and on behalf of the Authority to execute and deliver such consents, estoppel certificates and other agreements and documents as may be reasonably required to carry out the purposes and intent of the foregoing resolutions and the transactions contemplated thereby, including, without limitation, any documents required in connection with the mortgage financing referred to herein, any amendment to the Ground Leases or any sublease, an assignment and assumption agreement, or an estoppel certificate, execution thereof by the Director in each case conclusively to identify the same as being the document (with changes approved by the Director, if any) authorized by this resolution.

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JUNE 29, 1989MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM WHITNEY, ASSISTANT DIRECTOR
URBAN DESIGN AND DEVELOPMENT
ROBERT L. RUSH, DEPUTY DIRECTOR
HARBOR PLANNING AND DEVELOPMENT
GERALD KAVANAUGH, INSTITUTIONAL PLANNER
NEIGHBORHOOD PLANNING AND ZONING

SUBJECT: CHARLESTOWN NAVY YARD BUILDINGS 149 AND 199: TRANSFER
OF GROUND LEASES TO MIFA OR AFFILIATE.

In May, 1985 the Boston Redevelopment Authority (the "Authority") entered into 80-year Ground Leases with affiliates of the Congress Group for Building 149 and Building 199 at the Charlestown Navy Yard. The Ground Leases contemplated development of Building 149 for office, retail, commercial, and other lawful uses under the Charlestown Urban Renewal Plan, and Building 199 for use as a parking facility.

By resolutions dated December 3 and December 18, 1986, the Authority approved the transfer of the Building 149 Ground Lease and ownership of Navy Yard Parking Associates/LNRC Venture ("the Venture"), the entity which holds the Building 199 Ground Lease, to Navy Yard - Biotechnical Research Associates Limited Partnership ("Biotech LP").

Pursuant to a June 23, 1989 Letter to the Director, Biotech LP and the Venture (collectively, the "Seller") now wish to transfer their interests in Buildings 149 and 199 to the Massachusetts Industrial Finance Agency ("MIFA") or its designee for lease to affiliates of the Massachusetts General Hospital ("MGH"). MGH is the parent corporation of the General Hospital Corporation (the "General"), which is the major tenant in Building 149 pursuant to a sublease for approximately 392,000 square feet of office and research space, and 518 spaces of the 1360 spaces in Building 199. The General wishes to continue its tenancy in the Navy Yard on a long-term basis.

In order to package the best possible financial deal on a timely basis, enabling the General to remain as a long-term tenant at the Yard, and in order to accommodate certain accounting rules and federal reimbursement regulations which govern the General's operation, the interim buyer ("Buyer") of the Seller's interest in the building for lease to the General and its affiliates will be MIFA or a MIFA-affiliated tax exempt corporation. MIFA plans to transfer its interests to a corporation being established for the benefit of the MGH, but not controlled by it, once this new corporation has obtained tax

exempt status. The acquisition, as well as certain improvements, will be financed through the issuance of a series of long term tax-exempt and taxable bonds through MIFA, the debt service for which will be supported solely by means of the lease payments to be paid by the General and its affiliates for at least the first ten years, and by a mortgage on the property and the interests acquired. The lease obligations will be guaranteed by the General's parent corporation, MGH. It is contemplated that MIFA will transfer its interests in the buildings to the new corporation upon that corporation's receipt of tax exempt status, and the resolution of certain reimbursement issues, in consideration for the new corporation's assumption of the outstanding indebtedness on the bonds.

As part of the agreement, and simultaneous with the sale, the General and two affiliates will enter into triple net leases for a minimum of ten years for approximately 632,904 square feet of the approximately 649,815 square feet in Building 149, or approximately 97.4% of the space. The General will also enter into a lease for the same term as the Building 149 leases for substantially all of Building 199, and continue to operate it as a public parking garage. The MGH tenants will have successive five year options in both buildings. The rent will be structured to satisfy debt service obligations on the bonds as well as to finance a debt service reserve fund and a building maintenance fund. The annual rent of the MGH tenants for both buildings will take into account base rent and each tenant's share of operating expenses, payments in lieu of taxes, ground rent and linkage.

The financial terms of the purchase will be substantially as follows:

- o The Buyer will pay the Seller \$162.4 million for the interest in both buildings, and will assume or pay off the Seller's obligations under a \$10 million Industrial Revenue Bond, used to finance the parking garage at Building 199, and will assume or pay off the Seller's obligations under a loan from the Prudential Insurance Company, presently amounting to approximately \$14.2 million.
- o The Buyer and the Seller will share responsibility for the Authority transfer payment required under Section 19.4 of the existing Ground Leases, which will total \$2.8 million and which will be paid at the time of closing. The parties anticipate a closing during the first week of July.
- o Ground rent payments to the Authority will be continued at the current levels of \$500,00 per year: this breaks out as \$390,000 per year for Building 149 and \$110,000 per year for Building 199 for seven years, and adjusted thereafter as per the Ground Leases (i.e based upon the consumer price index, but not more than 5% per year).

- o Payments in Lieu of Taxes: For the first five years after the transfer, PILOT payments for Building 149 will be \$1,000,000 per year or \$1.54 psf. Thereafter, payments will be \$1,397,500 per year or \$2.15 psf. Payments for Building 199 will be \$212,192 per year. The Buyer will incorporate PILOT provisions in an agreement satisfactory to the City.
- o The Buyer will continue to honor the Building 149 linkage commitments, which will remain at \$225,983.75 per year through the term of the DIP Agreement.

It is also understood that any transfer by the Buyer to the new 501(c)(3) corporation or any subsequent transfer to another tax exempt entity affiliated with the MGH will not result in any recalculation of these amounts or any additional transfer payments.

Since the proposed ownership transfer and subsequent subleasing will offer significant benefits to the Authority and particularly to the Navy Yard, approval of these actions is hereby recommended:

An appropriate resolution is attached:

